

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| |) | WC Docket No. 04-36 |
| IP-Enabled Services |) | |
| |) | |

COMMENTS OF CALLIPSO CORPORATION

I. INTRODUCTION

Callipso Corporation (“Callipso”), by undersigned counsel, submits the attached comments in the above-referenced proceeding. Since the enactment by Congress of the Telecom Act of 1996, new entrepreneurial services providers, such as Callipso, have pioneered the commercial deployment of Internet-protocol-enabled (“IP-enabled”) services, including Voice over Internet Protocol (“VoIP”), which facilitate the ability of individuals with phones or other network devices to share voice and data communications. Such IP-enabled communications not only have become available at lower cost than traditional telecommunications over circuit-switched telephony networks, but advances in the computer processing of the communicated voice and data have enabled the enrichment of both the content of such communications and the user’s ability to customize the user’s communications environment . Such computer processing power, whether located in the network terminal device used by the end user or made available for the end user’s benefit at a gateway computer at the edge of an IP network, enables user interaction with data accessible over the network (potentially in several geographically dispersed locations), and enables user selection, for example, of the terminal devices, timing and format by which the user desires to share voice and data

communications. New software applications and new IP network devices continue to be developed, which continue to enrich IP-enabled communications and reduce their cost.

IP services providers, like Callipso, are enabling public access to the benefits of IP-enabled communications, offering services that integrate the physical IP network elements over which communications travel with the specific applications which process voice and data information in ways which benefit end users. While the pioneering services of entrepreneurial VoIP services providers are now being copied and gradually deployed by wireline telephony companies, cable operators and wireless providers, the IP-enabled services industry is nascent and IP-enabled communications currently account for but a tiny fraction of all U.S. domestic and international communications traffic.

Callipso supports the Federal Communications Commission's ("FCC") efforts to examine holistically the benefits of VoIP and other IP-enabled services to the American consumer and our economy, and how U.S. communications policies should be advanced through considered regulatory policies implemented by the FCC which relate to the nascent IP-enabled services industry and its VoIP services. Foremost among those policies established by Congress in the Telecommunications Act of 1996 is "To promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies"¹.

¹ Additional communications policies identified by Congress in the Telecommunications Act of 1996 include: "(1) to promote the continued development of the Internet and other interactive computer services and other interactive media; and (2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation".

The American consumer and economy have greatly benefited from (1) the growth of Internet Protocol networks and (2) increasing consumer access to the benefits of such networks through increasing consumer ownership of computer processing power and high speed access to such networks, facilitated by the “hands-off” regulatory approach urged by Congress and pursued by the FCC. The advances over the last decade in the manner in which American consumers and businesses communicate has been revolutionary, and have fundamentally enhanced the economic and social fabric of our country. America’s “information superhighway” has been expanding, but its benefits have not been ubiquitous²; most Americans do not yet own both (1) advanced computer processing devices and (2) the high speed broadband connectivity which enable optimal consumer access and utilization of the growing array of lifestyle and productivity-enhancing IP-enabled services.

Callipso supports Congressional and FCC initiatives aimed at accelerating the deployment in the United States of broadband connectivity. Broadband connectivity is not, however, an essential precondition of accessing the benefits of IP-enabled services, including VoIP. Today, the benefits of VoIP are available to all Americans who can access VoIP gateways (at the edges of IP networks) using traditional telephones, an admittedly less efficient but nevertheless functional technology to access next-generation IP networks and a number of their benefits. In order to bring the benefits of IP-enabled applications to the largest number of American businesses and individuals today, “VoIP gateway” service providers like Callipso are essential. Callipso’s next-generation network allows for small businesses and others to obtain the benefits of IP-enabled

² The United States does not even rate in the top ten countries in the world in terms of broadband penetration. See Point Topic Ltd., *World Broadband Statistic: Q4 2003* (rel Mar. 23, 2004).

services without investing in expensive customer premises equipment (“CPE”) and broadband connections. Users without access to broadband facilities and CPE are still able to participate in the digital revolution and benefit from the increased gains in efficiency and productivity that accompanies the use of IP-enabled applications.

Callipso urges the FCC to carefully consider the myriad of services and network architectures used to deliver such services that are available in the marketplace today. Equally important, the FCC must make certain that any rules adopted are flexible enough to account for both important differences among the various market participants as well as for the evolution of IP-enabled services. Any regulatory framework adopted for IP-enabled services must not, in the words of Chairman Powell “dumb down the genius of the Web to match the limited vision of a regulator.”³

IP-enabled services providers, their IP networks and their VoIP business models are all presently still evolving, and are not easily described by simplified characterizations as “phone-to-phone”, “computer-to-phone” or “computer-to-computer” services. Indeed, such providers, networks and services are becoming increasingly complex and hybrid. All commercially deployed VoIP services are providing American consumers today various benefits enabled by the use of IP technology, enhancing the end-to-end communications experience. Callipso suggests that neither Congress nor the FCC should pick winners and losers among similar evolving technologies and business models. The IP-enabled services industry, including VoIP, should continue to evolve, driven by market forces and not by premature regulation. Congress and the FCC should uniformly encourage innovation and the deployment of new IP technologies and IP-

³ Chairman Powell’s Statement, *IP-Enabled Services*, Notice of Proposed Rulemaking, WC Docket No. 04-36 (rel. Mar. 10, 2004) (“*IP-Enabled Services NPRM*”).

enabled services, regardless of whether the computer processing which enables such innovation and enhanced end user functionality is presently positioned at the beginning, at the middle or at the end of the end-to-end processing of a VoIP communication.

And until such time as broadband connectivity is widely deployed to American households and businesses, there is no compelling justification to adopt regulations which discriminate against the American consumer either with or without access to broadband connectivity by treating one model of VoIP services differently from others. As suggested by Chairman Powell, before imposing regulatory burdens on varieties of VoIP, we should consider the interests of “Average Joe”, and work to get to him the immeasurable benefits of VoIP.⁴

II. CALLIPSO’S SERVICE OFFERING

Callipso provides enhanced IP network services, principally enabling its wholesale customers to offer to their end user customers VoIP communications services throughout the continental United States over Callipso’s managed IP network. Callipso presently markets primarily to telecommunications companies, such as long-distance carriers, or to channel partners such as long-distance resellers, prepaid calling card providers and Competitive Local Exchange Carriers, who in turn incorporate Callipso’s services as part of their product offerings.

Callipso also markets and is further developing innovative communications services that integrate VoIP products into hosted and end-user defined computer-driven

⁴ “The Age of Personal Communications, Power to the People”, remarks of Michael K. Powell at the National Press Club, January 14, 2004 (“Before industry and politicians launch headlong into arcane debates about whether Internet Voice should be regulated because it looks a lot like a telephone, it is vital to ask first what is in it for the average Joe. ...Unquestionably, the Average Joe stands to benefit immeasurably from the development of VoIP and we should work to get it to him.”)

applications.⁵ Additionally, the Company offers many innovative features and functions that enhance the communications capabilities of its end users. For example, Callipso has developed its own product “ProConferencer”TM that integrates PC-based applications with web-based setup and billing of VoIP transported conference calls. Using IP-based network controls, customers are able to monitor conference calls in real time through a web-based interface. Customers can monitor which callers are on the phone, when callers are added or dropped from a conference call and allow for “break out” session between a subgroup of people participating in the call. Customers can setup a conference without picking up a telephone through their contact list in “ProConferencer”.TM Similarly, Callipso offers its prepaid calling card customers a web interface to manage their accounts. The web-based interface provides users with real-time update of numbers called, remaining minutes and the ability to purchase additional minutes through the use of a credit card. Callipso’s service is used for a variety purposes including web-based interactive Internet gaming applications.

Callipso’s IP network, which contains no circuit-switched components, is capable of accepting and processing communications in IP format regardless of the characterization of the originating or terminating device, so that Callipso’s network can (and does) carry commingled data and voice packets characterized as “phone-to-phone”

⁵ More information regarding Callipso’s next-generation IP network and services can be obtained at its website: www.callipso.com.

and “computer-to-phone” communications.⁶ Over 93% of the traffic carried on Callipso’s network is inter-state in nature.⁷

III. THE FCC MUST CLARIFY THE LIMITED SCOPE OF THE AT&T ORDER

As illustrated by the description of Callipso’s service above, not all VoIP services are alike. Companies use a variety of technologies and architectures in order to provision IP-enabled services. The FCC’s recent decisions concerning AT&T’s phone-to-phone IP⁸ service and that offered by pulver.com⁹ demonstrate the complexities presented by the different manifestations of VoIP. Due to the nature of VoIP services, the FCC engaged in a factually-intensive review of the services and wisely limited its rulings to the particular service configurations detailed in the relevant petitions.¹⁰

As explicitly stated in the *AT&T Order* and by Chairman Powell,¹¹ the *AT&T Order* was narrowly tailored to apply to AT&T’s service as described in its Petition. Indeed, the Commission makes clear in the first paragraph of the *AT&T Order* that the ruling is:

limited to the type of service described by AT&T in this proceeding, i.e., an interexchange service that: (1) uses ordinary customer premises equipment

⁶ In addition to Callipso-enabled “click-to-talk” traffic on Callipso’s network, Callipso carries traffic of other VoIP service providers, which reportedly originates, in whole or in part, from customer premises IP devices.

⁷ As reported by Callipso to the FCC in its filing of February 5, 2004, in docket 03-45, *Petition of pulver.com for Declaratory Ruling*, Callipso analyzed a sample of approximately 15.5 million calls on Callipso’s network during the period Jan. 18 to Jan. 24, 2004, excluding traffic from a single customer that was conducting a single-state test of the network.

⁸ See *Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges, Memorandum Opinion and Order*, WC Docket No. 02-361, ¶ 1 (released April 21, 2004) (hereinafter “*AT&T Order*”)

⁹ See *Petition for Declaratory Ruling that Pulver.Com’s Free World Dialup is Neither Telecommunications nor a Telecommunications Service*, 19 FCC Rcd 3307 (2004) (“*Pulver Order*”).

¹⁰ See *AT&T Order*; *Pulver Order*.

¹¹ See *AT&T Order*, Statement of Chairman Michael K. Powell (“Today’s decision is ...decided on very narrow grounds.”).

(CPE) with no enhanced functionality; (2) originates and terminates on the public switched telephone network (PSTN); and (3) undergoes no net protocol conversion and provides no enhanced functionality to end users due to the provider's use of IP technology.¹²

The FCC is still considering the many iterations of VoIP services available in the marketplace and the FCC has reserved the ability to arrive at a different conclusion during the course of this proceeding.¹³ Accordingly, the *AT&T Order* is limited to services identical to that offered by AT&T and the FCC has unambiguously notified the industry that the approach the FCC adopted in the *AT&T Order* may evolve during the course of the *IP-Enabled Services NPRM*.

Despite the FCC's concerted efforts to limit the potential "collateral damage"¹⁴ that could be inflicted upon other providers as a result of the *AT&T Order*, Callipso is encountering in the marketplace (among network vendors, customers and the financial community) considerable uncertainty as to the intended application of the decision. Callipso has never been a regulated telecommunications "carrier," and, under existing Commission precedent, its services do not constitute the provision of "telecommunications service" subject to regulation. Callipso does not hold itself out to the public as providing telecommunications services. Rather, Callipso has purchased "telecommunications" facilities as an end user, pursuant to the FCC's *Enhanced Service Provider Exemption*,¹⁵ to enable its customers access to Callipso's IP services; however,

¹² See *AT&T Order*, ¶ 1.

¹³ See *AT&T Order*, at ¶¶ 2, 10 ("This order represents our analysis of one specific type of service under existing law based on the record compiled in this proceeding. It in no way precludes the Commission from adopting a fundamentally different approach when it resolves the IP services rulemaking, or when it resolves the *Intercarrier Compensation* proceeding").

¹⁴ Statement of Commissioner Adelstein, *IP-Enabled Services NPRM*.

¹⁵ See *MTS and WATS Market Structure*, 97 FCC 2d 682, 711-22 (1983), *aff'd in principal part and remanded in part*, *National Ass'n of Regulatory Util. Comm'rs v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984).

the *AT&T Order* has had significant unintended negative consequences for Callipso's business.

IV. CONCLUSION

In light of the changed regulatory landscape that resulted from the *AT&T Order*, Callipso believes that it is in the best interest of the industry for the FCC to further clarify the scope of the decision. Specifically, Callipso respectfully recommends that the FCC clarify that the *AT&T Order* was not intended to prejudice the *IP-Enabled Services NPRM* treatment of all varieties of VoIP services, including the many different versions of "phone-to-phone" VoIP services. Such a clarification would settle a significant amount of the uncertainty in the marketplace and establish that it was not the intent of the FCC for the exception – AT&T's service – to swallow the rule – the *Enhanced Service Provider Exemption*.

Respectfully submitted,

/s/

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Dated: May 28, 2004